

Claim 1 was amended by adding the phrase “in an amount sufficient to produce a wet feel to a consumer without further wetting” in order to clarify the definition of “sufficient amount.” As set forth on page 6, lines 15 – 17 of the Specification, “ ‘sufficient amount’ refers to the amount of surfactant that is necessary to **produce a wet feel to the consumer** without tackiness” (emphasis added). Claim 7 was similarly amended by including the phrase “said surfactant is used in an amount sufficient to produce a wet feel to a consumer without further wetting.” Support for this language may be found in the Specification as originally filed at, for example, page 6, lines 15 – 17 and page 8, lines 21 – 24, and as such, this amendment does not introduce new matter into the Specification. Claim 7 was also amended to correct an inadvertent typographical error.

The amendment to claim 1 clarified the terms “sufficient amount” (which were included in claim 1 as originally filed) with the definition of “sufficient amount” that was provided in the Specification as originally filed. See Specification, page 15, lines 15 – 17. Because the claims should be read in light of the Specification and because Applicants’ amendment to claim 1 consisted of a substitution of claim terms with a definition of such claim terms from the Specification, Applicants respectfully submit that the amendment to claim 1 does not narrow the scope of the claim for reasons related to patentability.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached page is captioned “**Version with markings to show changes made.**”

**The Rejection of Claims 1 – 8 Under 35 U.S.C. §103(a) based upon McAtee in view of Venkitaraman Have Been Overcome.**

Claims 1-8 stand rejected under 35 U.S.C. §103(a) as being unpatentable over McAtee in view of Venkitaraman. Applicants respectfully disagree in view of the ensuing discussion.

McAtee is directed to an article that "is substantially free of water and generally **feels dry to the touch.**" See McAtee, column 7, lines 63 to 65 (emphasis added). As acknowledged in the Office Action, the McAtee article may include a benzalkonium chloride cationic antibacterial agent, but it "is deficient in the fact, that the articles of the invention are not alcohol-free." Because of the substantial dryness of the McAtee articles, a user is also **required to wet such articles with water prior to their use.** See McAtee, column 3, lines 58 – 61.

Venkitaraman is directed to a cosmetic applicator containing an oil-in-water emulsion, which does not include a "latex binder" or a "cationic antibacterial agent." See Venkitaraman, column 1, lines 13 – 17. The Venkitaraman applicators may be used "anytime when water and soap are not readily accessible." See Venkitaraman, column 1, lines 25 – 28.

According to the Office Action, one skilled in the art would have known to combine the antibacterial and surfactant characteristics of the cleansing article disclosed by McAtee with the substantially alcohol-free aspect of the cosmetic applicator disclosed by Venkitaraman. Applicants respectfully disagree for the reasons that follow.

First, there is neither a disclosure nor a suggestion to combine McAtee with Venkitaraman. As set forth above, McAtee is directed to a substantially **dry article** for cleansing and conditioning, which must be combined with water upon its use. By contrast, Venkitaraman is directed to a **water-impregnated** applicator that may be used "when water... is not readily accessible." See Venkitaraman, column 1, lines 27 – 28.

In order for a combination of references to be properly combined to render an invention obvious, it must be obvious to one skilled in the art that their teachings can be combined. See In re Avery, 518 F.2d 1228 (CCPA 1975). Thus, there must be some teaching, inference, or suggestion in either or both of the references that would have led one of ordinary skill in the art to combine the relevant teachings of the two references. See Ex parte Levengood, 28 USPQ.2d 1300 (BPAI 1993). The mere fact that it may be possible to combine two isolated disclosures does not render the result of such

combination obvious absent a logical reason of record that justifies such a combination. In re Regel, 188 USPQ 136 (CCPA 1975).

According to the Office Action, it would be proper to combine McAtee with Venkitaraman, despite the fact that the latter fails to disclose or suggest: 1) the use of a binder, let alone a latex binder; 2) the use of a binder that "is present in at least about 90% of the substrate thickness;" or 3) the use of a cationic antibacterial agent.

Applicants respectfully submit that there is neither a disclosure nor a suggestion to combine the dry articles of McAtee with the wet applicators of Venkitaraman. Rather, the proposed combination would not have been obvious to one skilled in the art because the inventions are directed towards substantially different articles.

Applicants further respectfully submit that the Office Action was extraordinarily selective in combining elements from the McAtee substantially dry, alcohol-containing cleansing and conditioning article (which, unlike the presently claimed invention, requires user wetting), and the wet, binder-free Venkitaraman cosmetic applicator (which unlike the presently claimed invention, also uses an oil-in-water emulsion and non-cationic antimicrobials.) As set forth in the case law, citation to references which merely indicate that isolated elements and/or features recited in the claims are known is not a sufficient basis for concluding that the combination of claimed elements would have been obvious. See Ex parte Hiyamizu 28 PQ2d 1300 (BPAI 1993). Such a selective combination of elements can only result from hindsight after the claimed invention was made, which is not the proper vantage point in time for deciding obviousness. See In re Carroll 202 USPQ 571 (CCPA 1979).

Thus, Applicants respectfully maintain that it was not proper for the Office Action to select only the "alcohol-free" element of Venkitaraman while it carefully ignored other elements of Venkitaraman, such as its incorporation of 1) an oil-in- water emulsion instead of an "aqueous antibacterial solution" as claimed and 2) a neutral or anionic antimicrobial agent instead of a "cationic antimicrobial agent" as claimed, as well as ignoring Venkitaraman's failure to disclose or suggest the use of a binder, let alone a latex binder. Citation to references which merely indicate that isolated elements and/or features recited

in the claims are known is not a sufficient basis for concluding that the combination of claimed elements would have been obvious. See Ex parte Hiyamizu 28 PQ2d 1300 (BPAI 1993). Such a selective combination of elements can only result from hindsight after the claimed invention was made, which is not the proper vantage point in time for deciding obviousness. See In re Carroll 202 USPQ 571 (CCPA 1979).

Moreover, assuming *arguendo* that it was proper to combine McAtee with Venkitaraman, and to further selectively combine only certain elements of Venkitaraman with only certain elements of McAtee, Applicants respectfully submit that the resulting combination still would not result in the presently claimed invention. For example, if one were to combine the alcohol-free aspect of Venkitaraman with the article of McAtee, the result would be an alcohol-free wipe having a dry feel, which is to be “used in combination with water.” By contrast, the presently claimed invention is directed to a wipe that “produce[s] a wet feel to a consumer without further wetting.”

Therefore, because 1) there is neither a disclosure nor a suggestion to combine McAtee with Venkitaraman; 2) the Office Action’s proposed combination resulted from improper hindsight based upon Applicants’ invention; and 3) the resulting combination still does not contain all of the elements of Applicants’ invention as set forth in claim 1 and claim 7, Applicants respectfully submit that the rejection of claim 1 and claim 7 under 35 USC §103 has been overcome and should be withdrawn.

Further, with respect to claim 2, Applicants respectfully submit that Venkitaraman does not disclose or suggest use of any “binder”, and McAtee does not disclose or suggest the presence of binder on both a “front surface and a back surface” as claimed in claim 2. See McAtee, column 14, line 56 to column 15, line 46.

With respect to claim 3, Applicants respectfully submit that Venkitaraman does not disclose or suggest the use of “cationic antibacterial agents”, let alone the particular antibacterial agent, “benzalkonium chloride” as claimed in claim 3. See Venkitaraman, column 4, lines 22 – 34.

With respect to claim 4, as above, Applicants respectfully submit that Venkitaraman does not disclose or suggest “benzalkonium chloride.” Further, McAtee fails to disclose or

suggest that the "effective amount of benzalkonium chloride is, based upon the total weight of the aqueous antibacterial solution, from about 0.09% to about 0.15%" as is claimed in claim 4. See McAtee, column 46, line 25 to column 47, line 25.

With respect to claim 5, Applicants respectfully submit that Venkitaraman does not disclose or suggest the use of any "binder", let alone a "polymer latex polymerized from at least one acrylic monomer" as is claimed in claim 5. McAtee also does not disclose or suggest Applicants' claimed "polymer latex polymerized from at least one acrylic monomer." See McAtee, column 14, line 56 to column 15, line 46.

With respect to claim 6, as above, Applicants respectfully submit that Venkitaraman does not disclose or suggest the use of any of "binder", let alone a "polymer latex polymerized from at least one acrylic monomer" as is claimed in claim 6. McAtee also fails to disclose or suggest Applicants' claimed polymer latex binder "comprised of a mixture of a self-crosslinking, acrylic emulsion polymer latex binder and an acrylic emulsion polymer latex." See McAtee column 14, line 56 to column 15, line 46.


With respect to claim 8, Applicants respectfully submit that Venkitaraman fails to disclose or suggest 1) the use of "cationic antibacterial agents", let alone the particular antibacterial agent, "benzalkonium chloride" or 2) the use of a "latex binder", let alone a "polymer latex polymerized from at least one acrylic monomer". See Venkitaraman, column 4, lines 22 – 34. McAtee also fails to disclose or suggest 1) the claimed range of "from about 0.21% to about 0.22%"; or 2) a latex binder "present in at least about 90% of the substrate thickness." See McAtee, column 46, line 25 to column 47, line 25 and column 14, line 56 to column 15, line 46.

In view of the above, Applicants further respectfully submit that the rejection under 35 USC § 103 of claims 2 through 6, which depend upon independent claim 1 and contain all of its limitations therein, as well as the rejection of claim 8, which depends upon independent claim 7 and contains all of its limitations therein, also have been overcome and should be withdrawn for the reasons set forth above.

**Conclusion**

Applicants believe that the foregoing presents a full and complete response to the outstanding Office Action. An early and favorable response to this Amendment is earnestly solicited.

Respectfully submitted,

  
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**Version with markings to show changes made."**

The claims were amended as follows:

1. (Amended) An alcohol-free antibacterial wipe comprising:  
a flexible fabric substrate containing a latex binder; and  
an aqueous antibacterial solution, wherein said aqueous antibacterial solution is  
comprised of an effective amount of a cationic antibacterial agent and [a sufficient  
amount of ] a surfactant in an amount sufficient to produce a wet feel to a consumer  
without further wetting, and said binder is present in at least about 90% of the substrate  
thickness.

7. (Amended) A method of preparing an alcohol-free antibacterial wipe which  
comprises

(i) preparing a solution of [an] a cationic antibacterial agent, a surfactant, and  
water; and

(ii) applying said solution onto a flexible fabric substrate containing a latex  
binder, wherein said binder is present in at least about 90% of the substrate thickness  
and wherein said surfactant is used in an amount sufficient to produce a wet feel to a  
consumer without further wetting.